

**IN THE COURT OF APPEAL OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION \_\_\_\_\_**

In re _____,	)	
	)	Appeal No. _____
A Minor Person Coming Under the	)	
Juvenile Court Law.	)	Superior Court No.
_____	)	_____
	)	
_____ COUNTY DEPARTMENT	)	
OF PUBLIC SOCIAL SERVICES,	)	
	)	
Plaintiff and Respondent,	)	
	)	
v.	)	
	)	
_____.	)	
	)	
Defendant and Appellant.	)	
_____	)	

APPEAL FROM THE \_\_\_\_\_ COUNTY SUPERIOR COURT

Honorable \_\_\_\_\_, Presiding

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**APPELLANT'S OPENING BRIEF  
PURSUANT TO *IN RE SADE C.* (1996) 13 CAL.4TH 952  
AND *ANDERS V. CALIFORNIA* (1967) 386 U.S. 738**

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Name, address, phone, State Bar number, etc.

Attorney for Appellant, \_\_\_\_\_  
By appointment of the Court of Appeal under  
the Appellate Defenders, Inc., (assisted /  
independent) case system

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section 366.26

section 395

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**STATEMENT OF FACTS/PROCEDURAL HISTORY**

*< Insert statement of case and facts here. >*

**STATEMENT OF APPEALABILITY**

This appeal is from a judgment made at a \_\_\_\_\_  
hearing under section \_\_\_\_\_ of the Welfare and Institutions Code and is  
authorized by section 395 of that code.

## ARGUMENT

### I.

#### **APPELLANT REQUESTS THIS COURT EXERCISE ITS DISCRETION TO INDEPENDENTLY REVIEW THE ENTIRE RECORD ON APPEAL.**

Appellant's counsel raises no specific arguable issues in the present dependency case and respectfully requests this court exercise its discretion of a matter properly before it under Welfare and Institutions Code section 395 to review the entire record on appeal for arguable issues of error in the court below.

The California Supreme Court has held that the prophylactic requirement of an independent record review by the court, as established in *Anders v. California* (1967) 386 U.S. 738 and *People v. Wende* (1979) 25 Cal.3d 436, does not apply to juvenile dependency cases. (*In re Sade C.* (1996) 13 Cal.4th 952.) Although this court is not required to review the record on appeal when counsel has filed an opening brief raising no specific issue, the state continues to have an important interest in an accurate and just resolution of a parent's appeal in dependency matters. Therefore appellant requests that this court exercise its discretion and independently review the entire record on appeal. (*See In re Sade C., supra*, 13 Cal.4th at p. 989.)

## II.

### **THIS COURT SHOULD CONSIDER THE FOLLOWING ISSUES AND ANY OTHERS ITS REVIEW OF THE RECORD DISCLOSES BEFORE DECIDING THE APPEAL**

The following information about claims appearing in the record is provided pursuant to *Anders v. California, supra*, 386 U.S. 738 to assist the court in conducting its independent review of the record and provide a basis for an informed decision on this case.

#### **A. Whether an Alleged Father Has Standing to Appeal the Sufficiency of an Indian Child Welfare Act Inquiry.**

Does an alleged father have a right to bring an appeal based on the insufficiency of the juvenile court's and the department's inquiry into the application of the Indian Child Welfare Act (ICWA)? (*In re Daniel M.* (2003) 110 Cal.App.4th 703.)

#### **B. Whether an Incarcerated Father Has a Right To Be Present at a Section 366.26 Hearing.**

Under section 2625 of the Penal Code, when does an incarcerated parent have a right to be present at a Welfare and Institutions Code section 366.26 hearing? (Pen. Code, § 2625; *In re Barry W.* (1993) 21 Cal.App.4th 358.)

**C. Whether Father Was Properly Served Notice of the Section 366.26 Hearing or Continued Section 366.26 Hearings.**

Was father properly served notice of the section 366.26 hearing or the continued section 366.26 hearing? (Welf. & Inst. Code, § 294; In re Phillip F. (2000) 78 Cal.App.4th 250; In re Jasmine G. (2005) 127 Cal.App.4th 1109.)



### III.

**APPELLANT [REQUESTS THE OPPORTUNITY TO FILE HIS OWN SUPPLEMENTAL BRIEF AND] REQUESTS THE COURT ORDER COUNSEL TO BRIEF ANY ARGUABLE ISSUE IT DISCERNs.<sup>1</sup>**

[Appellant’s counsel respectfully requests, in the interests of justice, that this court (accept the appellant’s own supplemental brief, tendered with this brief / provide appellant the opportunity to file his own supplemental brief within \_\_\_ days of the filing of this brief). Although the court is not required to accept a brief in propria persona, it may exercise its discretion to do so. (*In re Phoenix H.* (2009) 47 Cal.4th 835.)

If this court in reviewing this brief, the record, or any supplemental briefing finds good cause that an arguable issue exists, the court must order counsel to brief the issue. (See *Penson v. Ohio* (1988) 488 U.S. 75, 88 [withdrawal of counsel before court identified arguable issues “left petitioner completely without representation during the appellate court’s actual decisional process”].) Although *Penson* was a criminal case and thus the right to counsel was based on the federal Constitution, rather than state statutory, judicial, and rule authority, as is involved in a dependency case, the basic principle remains applicable here: once a legal right to counsel on appeal is established, the court may not decide arguable issues on the merits

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<sup>1</sup> Note to counsel: Bracketed parts should be included only if the appellant in fact wishes to file a brief.

without the benefit of advocacy by counsel.

## CONCLUSION

Based on the foregoing discussion, father requests that this court in its discretion make an independent evaluation of the record, consider the issues to which this brief has called attention, [allow father to file a supplemental opening brief,] and order this counsel to brief any arguable issue that is found.

Dated: \_\_\_\_\_ Respectfully submitted,

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Attorney for Appellant

## **CERTIFICATE OF WORD COUNT**

I certify that the foregoing brief complies with California Rules of Court, rule 8.204(c) and contains \_\_\_\_ words, including footnotes, according to the word count feature of \_\_\_\_\_, the computer program used to prepare the brief.

\_\_\_\_\_  
Attorney for Appellant

**DECLARATION OF \_\_\_\_\_**

I, \_\_\_\_\_, declare as follows:

1. I am an attorney licensed to practice law before all the courts of the State of California. I was appointed to represent \_\_\_\_\_ on appeal in Case No. \_\_\_\_\_.

2. I have thoroughly reviewed the record in this case and have discussed the case with a staff attorney at Appellate Defenders, Inc.

3. I have advised appellant by letter that a brief on his behalf is being filed according to the procedures outlined in *In re Sade C.* (1996) 13 Cal.4th 952 and *Anders v. California* (1967) 386 U.S. 738, and a copy of this brief has been provided to him.

4. I have further advised appellant by letter that this court may allow him to personally file a supplemental brief in this case raising any points which he chooses to call to the court's attention. I have sent a copy of the appellate record to appellant to assist him in filing a supplemental brief.

5. I do not hereby request to be relieved as appointed counsel but will freely withdraw should appellant request that I do so.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_